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Annual Report of the Whitewater Advisory Committee

Maine State Legislature

Office of Policy and Legal Analysis

John B. Knox

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STATE OF MAINE
114TH LEGISLATURE
FIRST REGULAR SESSION

ANNUAL REPORT OF THE
WHITEWATER ADVISORY COMMITTEE

January 1990

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EXECUTIVE SUMMARY

As indicated in last year's report, the growth period of the whitewater rafting industry appears to have ended. The 51,537 passengers carried on all rivers is 1% less than a year ago.

Once again the Advisory Committee can report that the safety and environmental record of the industry appears excellent. While the continuing contention over the failure of new and smaller companies to obtain allocations abated somewhat last year, a bill that might have resolved this issue lost its original industry-wide support and was not passed.

For the first time since its inception in 1983 the Committee is submitting legislation with this year's report. The following are the most significant aspects of this proposed legislation.

1. The Committee is backing an industry sponsored bill that will remove the beginning and end of the season from the allocation system and, it is believed, go a considerable distance in relieving the problem of new and small companies getting access to rafting.

2. The Committee is recommending the transferral of the responsibility for regulating rafting from the Department of Fisheries and Wildlife to the Department of Professional and Financial Regulation.

As the Advisory Committee is to sunset June 30, 1990, it would like to offer some suggestions to whichever Joint Standing Committee becomes responsible for rafting as to subjects to which its members might want to give particular attention.

1. Should the Advisory Committee's proposed bill dealing with rafting days at each end of the season be defeated, the new committee might want to create some way to deal with the subject of unused allocations.

2. There is evidence that some companies may be abusing the provision that allows them to occasionally exceed their allocation.

3. The committee might want to review the receipts and expenditures from the Whitewater Rafting Fund to ascertain the following:

- a. That all money that is due is being collected.
- b. That the reports required of the various State agencies are being submitted.

c. That the fund^o is not receiving money in excess of its needs.

d. That disbursements by State and municipal agencies are going to river recreation activities, as required by statute.

Whitewater Advisory Committee Annual Report

I. Background

A. Legislative

In 1983 the 111th Legislature enacted An Act to Regulate Commercial Whitewater Rafting, P.L. 1983, ch. 502. The purpose of this legislation was to enable the State to regulate whitewater rafting to protect the health, welfare and safety of its citizens and to protect its natural resources. To do so, the legislation sought to ensure the competence of commercial rafters, and to adopt use limits and to allocate these limits among the various interested parties. This legislation may be found in 12 MRSA §§7361-7370.

The Department of Inland Fisheries and Wildlife is given the major portion of the responsibility for implementing the regulations concerning the industry. However, Great Northern Paper Co. granted an easement along both sides of the Penobscot to the Bureau of Parks and Recreation to manage the recreation activity along the river. Since the major portion of this activity is whitewater rafting, the Bureau has developed expertise on this subject which has lead them to become an advisory body to the Department of Inland Fisheries and Wildlife on the administration of the allocation system. The Legislature gave the Bureau responsibility with the Department for the 1985 review of the use limit and allocation system required by the legislation.

The whitewater legislation set up a Whitewater Advisory Committee to advise the Department of Inland Fisheries and Wildlife and to report to the Legislature on the allocation process and other aspects of the operation of the industry which relate to the legislation. A committee report is required to be submitted by January 31st of each year. The four legislative members of the Committee are appointed during their legislative terms. The two non-legislative members serve until successors are nominated. The legislation originally called for the Committee to terminate June 30, 1986. This date was extended by the 112th Legislature until June 30, 1990, P.L. ch. 571.

Members are entitled to \$25 per diem compensation plus expenses. The Committee met once in 1989. Four of the six members were in attendance. Wilmot Robinson, who had been acting chairman since the resignation of Clinton Townsend a year ago, was elected Chairman at the 1989 annual meeting.

The day-to-day supervision of the regulatory process has been handled the last two years by Alan Clark, Wildlife Resource Planner, in the Department of Inland Fisheries and Wildlife.

B. The Allocation Process

According to statute, the major focus of the Committee's yearly report is to be the allocation process.

1. In Maine

Use limits for commercial rafting were set for the Kennebec and Penobscot rivers by the original legislation based on a number of factors; including days and durations of release and launch characteristics on the Kennebec and maneuvering times at difficult rapids and demands by other users on the Penobscot. These limits are currently as follows:

Use Limits

Kennebec River:

Sunday (no scheduled release) - no limits set
Weekdays (avg. 4 hr. release) - 1,000
passengers/day
Saturdays (avg. 2 hr. release) - 800
passengers/day
Memorial Day, July 4th, Labor Day - 800
passengers/day

Penobscot River:

Any day - 560 passengers/day between 8:30 A.M. to
5:00 P.M.

Commercial use on all days is monitored by reviewing monthly reports filed by outfitters. On the Kennebec and Penobscot there are daily total passenger limits and use on days of expected heavy use is regulated by the allocation system. These days currently include Saturdays between mid-May and mid-September on the Kennebec and Saturdays and Sundays between mid-May and mid-September on the Penobscot. Outfitters are restricted to carrying a specified number of passengers on these days, the total of which does not exceed the use limit.

The allocation system is used to assure that river use limits are not exceeded on heavy rafting use days. The following are the statutory goals of the allocation system:

1. To encourage a wide diversity of whitewater trip experiences and services;
2. To provide a fair distribution of river use among existing and future users;
3. To maximize competition within the recreational use limits;

4. To allow for reasonable business stability for outfitters by allowing stable, well-qualified outfitters who are providing excellent service and meeting the conditions of their allocations to continue to do so, subject to periodic review when allocations are reviewed;
5. To encourage efficient use of the allocation system;
6. To be flexible enough to adapt to changes in river use or river conditions;
7. To prevent evasion of the system; and
8. To provide opportunity for public access.

The law requires that allocations be distributed among outfitters according to the following specific criteria: the experience of the outfitter (40 points), outfitter safety records (25 points), the level of financial investment in whitewater rafting (15 points), the level and quality of services provided to customers (15 points), performance in meeting past allocations (30 points), and other factors (5 points). The decision on the weight to be assigned to the various criteria is delegated to departmental rulemaking and for 1989 was as indicated in the parentheses in the preceding sentence. The frequency of reassigning allocations is left to department rulemaking. Allocations have most recently been assigned for 3 years with the current period due to end in 1990. This past year the assignment period was extended to 5 years.

In addition to the assignment of allocations, outfitters are also assigned to a launch time. This assignment is based on operator preference, with conflicts being decided in favor of the operator with the longer record of continuous operation.

There is an 80 passenger per day limit for any outfitter on any rapidly flowing river. (This number was adopted as a maximum largely because of traditional passenger loads on larger trips by established outfitters prior to regulation.) Thus, the maximum allocation an outfitter can receive is 80. The law also sets a minimum allocation of 20 on the Kennebec and 16 on the Penobscot.

There is currently no restriction on the extent of non-commercial rafting, but registration is required for such trips. There is a provision in the law for setting aside for non-commercial rafting up to 10% of the use limit, should this be required. To date, the Department has deemed this not to be necessary.

2. Other states' allocation procedures

Staff discussed by phone the problem of new entrants with the two other Eastern states which regulate whitewater rafting, Pennsylvania and West Virginia. Both states have regulated their industry for over 10 years, neither has had a law suit although they report that a number of the individual outfitters are difficult to work with. There is a general feeling among those involved with the industry in Maine, that Maine has been more successful in dealing with safety and environmental issues than have Pennsylvania and West Virginia, although it should be noted that Pennsylvania takes exception to this view.

Procedures in Pennsylvania and West Virginia seem fairly similar to each other and somewhat different from those in Maine. These two states seem to focus their attention on the total number of passengers that the river should carry and give much less attention to the issue of how to divide these passengers among the outfitters. Pennsylvania also has a 50/50 passenger split between outfitter passengers and private trips, while Maine has very few private trips. Second, these states appear to have much less in law than Maine and to be more informal and more flexible in their regulation. However, in Pennsylvania the regulatory department has much more far reaching authority than exists by law, rule or practice in Maine. The following examples may be cited:

- a. As does West Virginia, Pennsylvania controls dam releases, while this is done by private interests in Maine;
- b. Pennsylvania shuts down rafting, or specifies boat types, when unsafe river conditions prevail;
- c. Pennsylvania assists outfitters in marketing;
- d. Pennsylvania makes day-to-day on-site allocation adjustments; and
- e. While affirming that safety is paramount, Pennsylvania states that their primary objective is the quality of experience that the rafter receives. Toward this end they survey all rafters that go down the river. Maine's legislatively stated objective, on the other hand, is to protect the safety of its citizens and to protect the natural environment. Pennsylvania states that it feels that its current program is such that it provides no threat to the environment.

Third, these states give allocations for much longer periods than Maine, i.e. 10 years in Pennsylvania and indefinitely in West Virginia. Fourth, these states gave allocations to the rafters in business at the time the regulation began and have no provision for new entrants or for growth among existing entrants nor do they offer any promises

to people in these situations. Pennsylvania does, however, reassign allocations if they are not being used. Interestingly, this approach results in the two States being very different from each other in terms of the number of outfitters with allocations. Pennsylvania has 4 on one river and 5 on the other. On its 3 regulated rivers, West Virginia has 25, 24 and 17 outfitters with allocations.

In West Virginia and on the last regulated of the Pennsylvania Rivers, outfitters in business at the time of the initial regulation were allowed to continue in business at the level of business that they were doing, and there have been few changes since. While West Virginia has a limit for total passengers on a river, once the allocations were given, they have no limit for an individual outfitter. In the case of the first Pennsylvania river, at the beginning of the regulatory process the State determined the number of passengers necessary for an outfitter to be financially successful. This determined the number of outfitters that could divide up the total passenger capacity of the river. This turned out to be 4 outfitters. These outfitter slots were then auctioned to the highest bidder, with the stipulation that the bidder had to be a Pennsylvania company and have experience in whitewater rafting.

Pennsylvania and West Virginia are similar to Maine in locating the responsibility for coordinating and implementing regulation of the industry within a department that would have knowledge of the matter being regulated (e.g. State Parks and Natural Resources, respectively) rather than in a department that has knowledge of regulation procedures in general (e.g. Maine's Department of Professional and Financial Regulation). Locating such responsibility in a non-regulatory agency was commented upon unfavorably in "Maine's Commercial Whitewater Outfitter Laws: Maximizing Competition or Destroying It?" 11 Vt. L. Rev. 233, 1986.

Like Maine, Pennsylvania does not have a whitewater regulatory board, i.e. composed of outfitters and private citizens. West Virginia does have such a board. It is composed of members of the regulatory department, outfitters, industry customers and non-rafting residents.

West Virginia is similar to Maine in requiring a public hearing of proposed rules. Pennsylvania does not require such a hearing.

3. Non-allocated rivers

The use limit and allocation laws apply only to the Kennebec and Penobscot Rivers. Additionally, outfitters using any rapidly flowing river must have a license, must pay \$1 a day head fee, and are limited to carrying 80 passengers per day. However, unlike the case of allocated rivers, any

affiliated outfitters may each carry up to the 80 passenger limit. Department records indicate that 9 outfitters have affiliates. A rapidly flowing river is defined as one judged by the Department to have Class IV or higher rapids or any stretch of river so designated by the Department.

C. Permits & Fees

1. Kennebec

Central Maine Power Company, on whose property the major launch area is located, charges outfitters a per customer fee of \$6. In the early 1980's, Voyagers Whitewater filed a complaint with the Federal Energy Commission claiming that the \$6 fee is excessive. During the past year the U.S. Court of Appeals dismissed all plaintiff appeals to this litigation.

2. Penobscot

Great Northern Paper Co. charges the Bureau \$500 per site for any site on its land whose ultimate use is commercial. The Bureau has not passed this cost on to the outfitters. In 1987, Great Northern Paper Co. began direct charges to outfitters. These fees are currently as follows:

Commercial Recreation License	\$50 application fee \$ 4 per customer
McKay Put-in Fee	\$ 2.50 per customer
Commercial Campgrounds	\$50 per week

D. Outfitter description and activities

Of the nine largest outfitters, seven have their headquarters in Maine. Five are in the area around The Forks, 2 in the Moosehead area, 1 in Brunswick and 1 in Portland. Five of these largest companies operate in other states, two only in New Hampshire, 1 in New Hampshire and New York, 1 in West Virginia and New York and 1 only in New York. West Virginia regulates whitewater rafting, while New York and New Hampshire do not.

Outfitters tend to distinguish between themselves more by creating a unique image and by ancillary facilities than by the trip itself or the price of the trip. On both allocated rivers in 1989 the price for the basic trip, which includes lunch, was between \$85 and \$90. However, the price for the basic total package on weekends, consisting of 2 breakfasts, 1 dinner and 1 night's lodging, ranged between \$105 and \$193, with the major variable being the lodging that the outfitter was prepared to offer.

In terms of facilities and other activities, on the Kennebec 6 outfitters have an inn, motel or cabins and 4 have restaurants open to the public. On the Penobscot, where a large area surrounding the river is owned by Great Northern Paper Company, 1 outfitter has a campground, two have campground affiliation and one has an affiliation with an inn. Overall, five outfitters offer some other form of boating, such as canoeing or kayaking, while almost all have hot tubs. In general, it may be said that as the growth of the industry has slowed the outfitters have added facilities and activities in order to increase the appeal of rafting, obtain other income from rafters and appeal to non-rafters.

In terms of marketing strategy, the table below shows the considerably different images that the various companies attempt to portray based on the slogans used in their brochures.

	<u>Slogan</u>
Downeast	New England's Largest River Outfitters
Easter	Wet & Wild
Maine Whitewater	An Established Tradition
All Outdoors	The Adventure Company
Crab Apple	Go For It
Unicorn	A Decade of Excellence
New England Whitewater	Adventure for Gentlemen, Ladies and Families
Northern Outdoors	Maine's Premier Whitewater Resorts
Wilderness Expeditions	The Most Complete Destination in the Moosehead Lakes Region

II. The 1989 Rafting Season

A. Licenses issued

Twenty-nine licenses were issued for commercial whitewater rafting in 1989. This is one more than any previous year and one more than last year. Forty-five percent of these companies had allocations (most did not request them). There has been a consistent downward trend since 1984 in the percent of licensed outfitters having allocations.

B. Total passengers carried

1. Analysis of trend and past year

The table below shows the number of commercial whitewater rafting passengers by year.

<u>Kennebec River</u>				<u>Penobscot River</u>				<u>All Rivers</u>			
#	% Change	#Change		#	% Change	#Change		#	% Change	#Change	
	vs. Prev.	vs. Prev.			vs. Prev.	vs. Prev.			vs. Prev.	vs. Prev.	
Year		Year		Year		Year		Year		Year	
1981	7341	+37%	+2001	8425	+38%	+2319		15766	+38%	+ 4320	
1982	13326	+82	+5985	8588	+ 2	+ 163		21914	+39	+ 6148	
1983	17517	+31	+4191	11981	+40	+7393		29498	+35	+ 7584	
1984	22369	+28	+4852	15382	+28	+3401		39698	+35	+10200	
1985	23677	+ 6	+1308	18912	+23	+1530		44757	+13	+ 5059	
1986	27546	+16	+3869	18130	- 4	- 782		48228	+ 8	+ 3471	
1987	30229	+10	+2683	18745	+ 3	+ 615		52118	+ 8	+ 3890	
1988	29711	- 2	- 518	18997	+ 1	+ 252		51906*	+ 0	- 212	
1989	29841	+ 0	+ 130	17949	- 6	-1048		51537	- 1	- 369	

*Two hundred forty-four passenger adjustment to reflect change in record keeping procedures.

The passenger count for the 1989 season tends to confirm the hypotheses in last year's report that rafting is becoming a mature industry. It also tends to confirm the observation that river flow is an insignificant factor in effecting passenger numbers when compared to the effect of the maturing of the industry. (See river flow information in appendices J & K). Interestingly, if the Sunday passenger increases occasioned by the first time there have been Sunday releases are removed, the growth rate for the Kennebec goes from 0% to -5%.

If one applies the formula developed in "A Determination of the Economic Activity Generated by Commercial Rafting" Social Research Institute, University of Maine, March, 1983, to the current passenger figures, it is determined that in 1989 the total economic activity due to rafting in Maine was approximately \$35,000,000, with the Kennebec accounting for \$20 million, the Penobscot \$12 million and the Dead \$3 million.

2. The Dead River

Since the Dead River has Class IV rapids, most outfitters and the Department looked on it as a rapidly flowing river, and thus subject to certain regulations. However, prior to 1989 it was never designated as a rapidly flowing river by the Department as required by statute, and a small number of outfitters were not considering it as such and not paying the required head fee. By rule, effective August 14, 1989, the Department designated the Dead River as a rapidly flowing river, thus requiring reports of all outfitters.

With a reservoir capacity of 12,000 cfs, compared to 35,000 for the Kennebec and 57,000 for the Penobscot, and without the role of power provider of the other two rivers, the Dead River has a very different schedule for rafting. It appears that, traditionally, Kennebec Water Power Company, the company responsible for the flow on the Dead, has released the heavy spring run-off on two Mondays in May, creating each time a flow of at least 7,000 cfs which would qualify the river as a Class IV, or rapidly flowing river.

In 1988, at outfitter request, the release pattern was changed to one Sunday and two Mondays in May with releases of 5,500 cfs. In 1989, releases of 5,500 in June and 3,500 in September were added.

The following shows the passenger trend on the Dead by year:

	<u>Number</u>	<u>Change vs. Year Ago</u>	
		<u>Number</u>	<u>%</u>
1984	1,946	N/A	N/A
1985	1,951	+ 7	+ 0
1986	2,914	+963	+ 42
1987	3,144	+230	+ 8
1988	2,954	-190	- 6
1989	3,747	+797	+ 27

It is helpful to look at the data by individual rafting days as is done below:

	<u>Passengers</u>	
	<u>1988</u>	<u>1989</u>
Sunday, May 14/15	514	714
Monday, May 22/23	1012	800
Monday, May 29/30	<u>1307</u>	<u>1079</u>
TOTAL MAY	2833	2593
Sunday, June 18/19	0	340
Sunday, September 24	0	608

This analysis indicates that the total gain is due to the addition of 2 rafting days later in the season. It also reveals that, in spite of total passenger growth, there was only 1 day in 1989 when the passenger count exceeded 1,000, which is the weekday limit on the Kennebec and the highest per day limit in statute.

The proposed schedule for next year is the same as in 1989, except there will be 2 Sundays and 1 Monday in May.

As shown on the following table, the market share situation on the Dead River is considerably different from that on the Kennebec and the Penobscot.

	<u>Dead</u>		<u>Kennebec</u>	<u>Penobscot</u>
	<u>1989</u>	<u>1988</u>	<u>1989</u>	<u>1989</u>
Market Share of:				
Largest Company	14%	8%	19%	21%
2 Largest Companies	26%	16%	31%	40%
3 Largest Companies	35%	24%	41%	56%
4 Largest Companies	44%	33%	51%	65%
Companies without allocations*	30%	28%	1%	1%
NonAffiliated companies without allocations	3%	7%	N/A	N/A

*(For Dead River = No allocations on either other river)

There has always been the question of what the rafting business would look like without the allocation system. Would there be more outfitters because of freedom of entry or fewer because the large ones would drive the small ones out? Unfortunately, the situation on the Dead doesn't answer this question because of the continued presence of a limitation on the number of passengers an outfitter can carry.

3. Trend in allocated days and nonallocated days

Forty-one percent of the passengers carried on the Kennebec are carried on Saturdays, the one allocated day on that river. This is 4 percentage points less business on Saturday than a year ago. The next closest day is Friday with 13%.

Interestingly, as shown in the following chart, the existence of an allocation system on Saturday doesn't result in

any more concentration of the business. It appears, instead, that on busy days the per company passenger limit acts to disperse the business.

	<u>Saturday</u>	<u>All Days</u>
Market Share		
Top Company	14%	19%
Top 2 Companies	25	31
Top 3 Companies	36	41
Top 4 Companies	46	51

On the Penobscot 71% of the passengers are carried on Saturday and Sunday, the two allocated days. There has been little change in that figure over time.

The rivers were quite similar in the dispersing of the business by month, with July and August each accounting for about 1/3, May and September about 10% each and June between 15 and 19%.

C. Market share analysis

A review of data on outfitters share of market for the Kennebec and Penobscot Rivers from the previous table yields the following conclusions:

1. Business on the Penobscot continues to be more concentrated than on the Kennebec.
2. Business on the Penobscot is more concentrated than last year. On the Kennebec the largest company has more of the market than a year ago, while the top two companies have less of the market.
3. For each river the largest company accounts for about one fifth of all passengers carried. On the Penobscot 3 companies account for over 50% of all passengers, while four companies are required on the Kennebec to reach the 50% level.

D. Allocation use

1. Under use

a. Overall

A major problem identified by the Committee in the past has been the emphasis which the scoring system gave to the 10 best days and the failure of outfitters to use their total allocation over the entire season. In 1989 a rule change was made to base scoring on all allocated days. Also, a program of guaranteed

allocations for those with minimum scoring was instituted in 1989 to address this problem. As the table below shows, these changes have resulted in no improvement.

	<u>% of Allocations Used-Total Season</u>				
	<u>1985**</u>	<u>1986**</u>	<u>1987*</u>	<u>1988</u>	<u>1989</u>
Kennebec Saturdays	73%	75%	NA	69%	67%
Penobscot Saturdays	73	72	NA	63	66
Penobscot Sundays	59	54	NA	51	49

*Data for 1987 was not computed

**Includes companies that no longer have allocations

In its report last year the Committee stated its feeling that a failure to achieve significant improvements in allocation use in 1989 should require that this issue receive major attention. The Committee continues to feel this way.

b. Under use - Individual outfitters

On the Kennebec on Saturdays, the only one of the 3 allocated days with an adequate number of small companies to allow generalization, under use of an allocation does not appear related to the total number of allocations held. There seems to be consistency within a company, in that failure to use an allocation extends generally to all rivers on which that company operates. Additionally, 3 of the 4 companies with the poorest record this year were among the 4 with the poorest records last year.

2. Over use of allocation

There were 2 days on the Kennebec when the total allowed capacity of the river was exceeded, once by 8 and once by 6 passengers.

The law provides that individual outfitters may occasionally exceed their allocations by 2 passengers on a trip of up to 40 and 4 passengers on a trip of up to 80 passengers, provided that the average of the number of passengers carried on an outfitters 10 best days and for each allocated day of the week does not exceed his allocation for that day.

During 8 peak days of the season on the Kennebec 4 outfitters exceeded their allocations on 5 or more of these 8 days, while on the Penobscot on Saturday two outfitters

exceeded their allocations on 4 or more of the 7 peak season days. The table below shows the data in historical perspective.

Number of Companies Exceeding Allocation on This Many Days

	<u>Kennebec</u>			<u>Penobscot Saturday</u>		
	<u>3 Days</u>	<u>4 Days</u>	<u>5+ Days</u>	<u>3 Days</u>	<u>4 Days</u>	<u>5+ Days</u>
1986	4	3	2	3	2	1
1988	3	2	0	1	2	0
1989	2	0	4	0	1	1

It seems that the trend on both rivers of the number of companies exceeding allocations frequently is down, but, among those who do so, on the Kennebec the frequency of doing so is up.

Of the 4 outfitters who most frequently exceeded their allocations on the Kennebec, one did not run the Penobscot. Two of the three remaining were also among the four companies with the poorest records on the Kennebec. Of the two companies that have had considerably poorer records on the Penobscot, one did not run the Kennebec. The other was among those with the poorest records on the Kennebec.

Historically, there is evidence that some but not all of the companies which had the highest evidence of exceeding their allocations have a history of doing so in the past. (See Appendix I.)

On the opposite end of this spectrum of over use is the fact that 4 companies on the Kennebec exceeded their allocation only once in 1989, while three did not exceed at all on the Penobscot on Saturday.

The point being made by this somewhat detailed analysis is that the Committee has the feeling that some companies may be abiding by neither the letter nor spirit of the law and that more strict monitoring or a change in the law may be required. A change from the average of the best 10 days to the average of the best 8 days might provide additional control, as there are really only 8 peak weekends in the season.

E. Non-licensed trips

The law requires a license for commercial rafting. Neither a license nor an allocation is required for noncommercial rafting.

In 1988 there were 250 nonlicensed trips on the Kennebec, accounting for 6% of the total passengers. This is a 34% increase in trips versus a year ago. On the Penobscot there were only 37 trips accounting for 256 passengers, in total. This represents a 61% increase. In the past, there has been a problem with commercial trips being run without a license. The Department feels that the change in the legal definition of a whitewater outfitter provides them with adequate means to deal with this problem.

F. Licenses & Fees

1. Licenses

There is a \$250 fee for an annual commercial rafting license. With 29 licenses in 1989 this produced revenue of \$7,250. This money goes to general Departmental activities.

2. Allocation Fees

a. Revenues

There is an annual allocation fee of \$250 per unit of 20 passengers per river and a daily fee of \$1 per passenger. These funds are to be deposited in the Whitewater Rafting Fund and dispersed for use on river recreation with primary emphasis on rafting.

A history of the Rafting Fund is in Appendix M. The following is a report for fiscal year 1989:

Balance 7-1-88		\$ 4,808
Revenues Fiscal 1989		\$88,868
Distributed to Agencies		\$74,207
Warden Service	\$47,653	
Parks & Recreation	\$18,328	
Counties	<u>\$ 7,331</u>	
Balance 6-30-89		\$19,469

The 1989 revenue figure is 39% higher than last year and 23% higher than any previous year. There are three reasons for this increase:

1. In the past there apparently were outfitters that were not paying any fees or not the full fee. The Department tightened up their procedures for the current year and collected back payments due from previous years.

2. In resolving outfitter suits about the allocation system, the presiding judge increased the number of passengers allowed on each river for the 1989 season.

3. In the past, outfitters were allowed to credit their \$250 license fee against their total allocation fee. There was no precedent in the law for this and the process has been discontinued.

b. Distributions & Expenditures

12 MRSA 7370 sub-§3 requires by February 1 each year a report by the Department of Inland Fisheries and Wildlife and the Bureau of Parks and Recreation to the Joint Standing Committee on Fisheries and Wildlife of their "planned expenditures for the next fiscal year and the next previous year." The Advisory Committee has interpreted this as meaning the current fiscal year (FY 90) and the next fiscal year (FY 91).

The results of this report for FY 89 are shown in the following table.

	<u>IF&W</u>	<u>Conservation</u>
Balance July 1, 1988	NA	\$30,000
Receipts FY 1989	\$48,000	\$19,000
Expenditures FY 1989	\$37,000	\$11,000
Balance June 30, 1989	NA	\$37,009

As the table indicates, receipts for both agencies exceed expenditures. This has been the case for some time for the Bureau. Their practice has been to carry a balance, as the Committee understands it, against capital expenditures that might be required in the future.

This is the second year that this report has been received from the Department by the Advisory Committee. It apparently has been Department practice to use the excess of receipts over expenditures on general expenses of the Warden Service. This practice appears to be counter to Title 12, section 7370 which states that all monies from the fund are to be expended for purposes related to river recreation.

Details on expenditure plans for both agencies are in Appendices N & O.

In past reports the Committee has expressed concern about three practices relating to the Rafting Fund, but because of the pressures of dealing with the allocation system and the fact that the law calls for the Fund report to be submitted to the Fisheries and Wildlife Committee the Committee has not, until this year, pursued any of these to a resolution. This year it is making recommendations concerning 1 of the 3. It suggests that the Committee on Fisheries and Wildlife, to whom the report is addressed, might want to look into the other 2 issues. The three matters referred to are:

1. The fact that the receipts for the Department and the Bureau are continually in excess of expenditures.
2. The fact that the Department apparently spends this excess on Warden Service matters not related to rafting.
3. The fact that a survey in 1987 by Committee staff indicated that municipalities are not spending their portion of the disbursement from the fund on rafting related activities, as required by law. This is the item about which the Committee is making a recommendation in this year's report.

G. Regulatory activity

1. Northern Outdoors Campground

In 1986 the Land Use Regulation Commission (LURC) granted a heavily conditioned permit to Northern Outdoors to develop a 63 site campground for its rafters near Baxter State Park on land leased from Great Northern Paper Company.

In 1987 Northern Outdoors petitioned LURC to be allowed to open the campground to the general public. LURC responded that this violated the company's agreement with Great Northern. In 1989 Northern Outdoors revised this agreement but as of January 12, 1990 LURC continued to deny their request but has indicated a willingness to consider an application which would make a small number of sites available to the general public. Additionally, Northern Outdoors was cited by LURC for entering into an agreement with Wilderness Expeditions which allowed the latter to use the campground.

2. Status of Campgrounds

Prompted by the interests of Unicorn Rafting, the Whitewater Outfitters Association petitioned LURC to have outfitter campgrounds designated as commercial sporting camps, which are defined as facilities devoted to offering primitive lodging for persons in pursuit of primitive recreation. The advantage of this change to the outfitters would be that their camps would then be a recognized use under LURC's land use standards rather than falling in the special exception category when they wish to establish or expand their facilities, as they now do. As of January 12, 1990, this petition has not been granted but LURC has indicated a willingness to set aside certain areas for the establishment of outfitter facilities

H. Proposed & enacted changes in laws & rules during 1989

1. Law

(a) First Regular Session

During the First Session of the 114th Legislature, Rep. Patrick McGowan, submitted LD 1365 "AN ACT to Amend the Laws Relating to Commercial Whitewater Rafting." The bill did not pass. This bill contained the following provisions:

(i) Extension of the definition of an outfitter to include those organizations that have any commercial involvement with rafting.

(ii) Several, somewhat nebulous, directions to the Department which appeared to seek to protect the investments of current outfitters.

(iii) Transfer of detailed safety provisions from law to rule.

(iv) The increase in the individual outfitter daily passenger limit per river from 80 to 160 passengers.

(v) The increase in the allowed allocation period from 3 to 5 years.

(vi) A major change in criteria for issuing allocations. (See page 3 of this report for the current criteria.) This change would allow outfitters to retain their entire allocation if their use were at least 75% of the industry average. Applicants with no allocations were to receive priority for such allocations as became available, provided they carried 2.5% (Kennebec) and 2.9% (Penobscot) of the total passengers carried on unallocated days.

(vii) Removal of holidays as allocated days.

(viii) Removal of the restriction on exceeding allocation that requires that the average of the 10 best days not exceed the allocation.

(ix) A shortening of the allocation season to June 1 to September 1.

(x) Dissolution of the Advisory Committee.

This bill was, initially, supported by the whitewater industry but during the public hearing certain

industry factions opposed portions of it. The Fisheries and Wildlife Committee eliminated the controversial provisions and added items (i) & (v) to the yearly Department omnibus bill and added a provision that allocations issued for periods longer than 3 years are to be reviewed at the end of the 3rd year.

(b) 2nd Regular Session

Three bills were filed with the Legislative Council for the Second Regular Session of the 114th Legislature. All bills were initially rejected by the Council. LR 2971 was subsequently let in on appeal.

(1) LR 2971 - Rep. Foss

A. Eliminates the current waiver of liability insurance when such insurance is not available.

B. Eliminates restrictions on the sale of an outfitter's business.

C. Eliminates the provision that allows for licensing affiliated outfitters. This would particularly affect Dead River, where affiliated outfitters are allowed 80 passengers per day each. This is not allowed on the allocated rivers.

D. Changes the basis for the order of launch from length of time in business to random drawing.

E. Establishes a 1,000 person use limit on the Dead River, which currently has no limit and has in the past exceeded 1,000 passengers.

F. Establishes an 800 person limit for the Kennebec on Sundays. It was originally thought that there would be no raftable releases on Sunday. However, there were 37 hours of "raftable flow" on Sunday last year.

G. Repeals the current allocation system and establishes the following:

1. Makes the Dead an allocated river.
2. Makes allocations good for only 1 year.
3. Determines the number of allocations awarded to each applicant by dividing the passenger limit of the river by the number of applicants.

4. Limits the allocation period to the third Saturday in June until the first Sunday in September.

The two legislative members of the Advisory Committee present at the annual meeting indicated strong opposition to the major changes included in this bill. However, it does appear that it might be worthwhile to revisit the insurance issue since there have been a number of changes in the issue of liability insurance since the Committee last considered outfitter insurance.

(2) LR 3143 - Rep. Gould

No draft was submitted with this request. Based on material submitted with the request by Rep. Gould, it appears that the intent of this bill would be to allow outfitters without allocations to carry 12 passengers a day on allocated days when the previous year's use on that day was less than 80% of that allowed.

(3) LR 3356 - Rep. McGowan

The Committee supports the concerns in this bill and it is discussed in the recommendations' section of this report.

2. Rules

The definition of a rapidly flowing river was changed to eliminate the river classification provision and the provision for departmental designation. The Dead River was added for those times when its flow exceeds 3,500 cfs.

I. Report of Whitewater Safety Committee

1. Accident Report

The Whitewater Safety Committee is required to make an annual report to the Advisory Committee. This report has been received in only the past 2 years. However, the 1988 report provided historical data.

The accident rate on the Kennebec in 1989 of 14 per 10,000 passengers was double the rate in any previous year. The 1989 rate on the Penobscot was 12 per 10,000 which was an increase of 2 over the previous year and interrupted a steadily declining trend from a high of 24 in 1983. The Safety Committee hypothesized that these increases were due to different definition directives given the outfitters.

Through contacting those states, staff ascertained that neither of the 2 Eastern states which regulate rafting keep safety records, which might have served as a comparison for the Maine data.

The Safety Committee reported that the records indicated that no individual outfitters have unusually bad safety records.

2. Safety Committee Recommendations

The Safety Committee made the following recommendations:

- (a) Delete much of the specific safety information in statute and place it in the Departmental rules.
- (b) Eliminate the requirement for a monthly report and rely on the reports of specific accidents.
- (c) Computerize the accident reports.
- (d) Provide information on Dead River access and emergency evacuation routes.

It is the Advisory Committee's understanding that the Department concurs in items a, b and d and will submit recommendations to the Committee on Fisheries and Wildlife. The Department indicated that they did not have the computer capacity to implement item c.

III. Recommendations

A. Legislation

The Committee is submitting a bill this year which seeks to accomplish the following:

1. Changes in allocation system

(These changes represent what the outfitters told the Committee are the unanimous recommendations of the outfitters.)

- a. Limits allocated days to Saturdays from June 8th through August 31st and July 4th.
- b. Provides that any outfitter that uses at least 75% of its allocation shall retain its entire allocation.
- c. Increases the number of passengers that an outfitter may carry on an unallocated weekday from 80 to 120 per river.

2. Other Legislative Changes

- a. Requires officials of municipalities and unorganized territories to submit to the Department a Statement of Assurance certifying that they are spending their portion of the Whitewater Rafting Fund disbursement on river recreation activities as required by the law.
- b. Requires the Committees on Business Legislation and Fisheries and Wildlife to submit by December 1, 1990, legislation that will transfer responsibility for regulation of the industry from the Department of Inland Fisheries and Wildlife to the Department of Professional and Financial Regulation. Responsibility for safety issues is to remain with Inland Fisheries and Wildlife.
- c. Requires that the annual report of the Whitewater Safety Committee, which used to go to the Whitewater Advisory Committee, be submitted to the Commissioner of Inland Fisheries and Wildlife.

3. Housekeeping Type Changes

- a. Requires that monthly outfitter reports be submitted by the last day of the month following the reported month and requires that lateness be a factor considered when allocations are assigned.

b. Makes it clear that the annual report of the Whitewater Rafting Fund is to include data on the last, current and next fiscal years.

c. Moves laws concerning non-allocated rivers out of the section on allocated rivers.

B. Department and Bureau Activity

1. Department of Inland Fisheries and Wildlife

The Committee asked the Department to present recommendations to the Fisheries and Wildlife Committee in time for the public hearing on the Advisory Committee's recommendations. These recommendations are to cover the following areas:

1. Recommendations made to the Committee by the Whitewater Safety Committee (see the safety section of this report).

2. Sale of an outfitter's assets and allocations. This recommendation is to receive Attorney General concurrence before submission to the Fisheries and Wildlife Committee.

3. Whether outfitters should be required to submit a list of the guides that they actually use. Currently, guide experience is a criterion for awarding allocations, but there is no follow-up to determine if the proposed guides are the ones actually used.

4. How to handle "duckies". These craft are inflatables shaped like kayaks and called kayaks, apparently in an attempt to circumvent the law, which excludes kayaks. There is a question as to whether these craft are safe and whether they create unacceptable river congestion.

2. Bureau of Parks and Recreation

Several persons living along the road to the former Penobscot put-in site have complained about the continued use of this road by outfitters. The Bureau has indicated that it will look into this issue and take the appropriate action.

C. Other Recommendations

Since this is the last year of the Advisory Committee it is recommended that the department and the legislative committee having responsibility for whitewater rafting concern themselves with the following problems:

1. Under use of allocations. See page 11.
2. Over use of allocations. See page 12.
3. The need for allocations on the Dead River. See page 9.
4. The administration of the Whitewater Rafting Fund. See pages 15 & 16.

KENNEBEC SATURDAY ALLOCATION HISTORY

	1983	1984	1985	1986	1987	1988 (Superior Court)	1989-1990
Magic Falls	0	0	0	0	0	0	0
Atlantic Outdoor Adventures	0	0	0	0	0	0	0
North Country Rivers	30	20	20	20	0	0	0
North American Whitewater	0	0	0	0	20	20	20
Voyagers Whitewater	20	20	20	20	20	20	20
All Outdoors	30	30	30	30	30	30	30
Rolling Thunder	40	40	40	40	40	40	20
Great Adventures	40	40	40	40	80	80	76
New England Whitewater Center	40	60	60	80	80	80	79
Eastern River	80	80	80	80	80	80	78
Crabapple Whitewater	20	30	30	40	50	80	80
Downeast Rafting	80	80	80	80	80	80	80
Maine Whitewater	80	80	80	80	80	80	78
Unicorn Rafting	80	80	80	80	80	80	80
Wilderness Rafting	60	80	80	80	80	80	79
Northern Outdoors	80	80	80	80	80	80	80
Back Country River	50	0	0	0	0	0	0
Rapid Transit	20	30	30	0	0	0	0
Whitewater Adventures	50	50	50	50	0	0	0
# of Outfitters by Size of Allocation							
Max (80)	5	6	6	7	8	9	4
Med (40-79)	6	4	4	4	2	1	5
Small (20-39)	5	5	5	3	3	3	4
Total # of Outfitters with Allocations							
	16	15	15	14	13	13	13

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PENOBSCOT SATURDAY ALLOCATION HISTORY

	1988						1989-1990
	1983	1984	1985	1986	1987	(Superior Court)	
Magic Falls	0	0	0	0	0	0	0
Rolling Thunder	16	20	20	20	20	16	16
North Country Rivers	20	16	16	32	32	32	32
New England Whitewater	0	0	0	20	68	68	62
Downeast Rafting	48	56	64	64	64	78	64
Eastern River Expeditions	80	80	80	80	80	80	80
Wilderness Rafting	48	64	64	64	64	78	61
Maine Whitewater	60	72	72	72	72	80	69
Unicorn Rafting	72	80	80	80	80	80	80
Northern Outdoors	80	80	80	80	80	80	80
Wildwater Adventures	48	48	48	48	48	0	0
Back Country River	16	0	0	0	0	0	0
Great Adventures	40	0	0	0	0	0	0
Rapid Transit	16	20	20	0	0	0	0
Whitewater Adventures	16	24	16	0	0	0	0
Crabapple Whitewater	0	0	0	0	0	0	16
# of Outfitters by Size of Allocation							
Max (80)	2	3	3	3	3	4	3
Med (40-79)	6	4	4	4	5	3	4
Small (16-39)	5	4	4	3	2	2	3
Total # of Outfitters with Allocations	13	11	11	10	10	9	10

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PENOBSCOT SUNDAY ALLOCATION HISTORY

	1988						
	1983	1984	1985	1986	1987	(Superior Court)	1989-1990
Magic Falls	0	0	0	0	0	0	0
Great Adventures	40	0	0	0	28	28	0
Rolling Thunder	16	20	28	28	28	0	16
North Country Rivers	16	16	0	16	16	16	40
New England Whitewater	16	32	36	60	80	80	72
Maine Whitewater	56	68	72	72	72	79	80
Downeast Rafting	48	56	56	56	56	76	80
Eastern River Expeditions	80	80	80	80	80	80	80
Wilderness Rafting	48	32	40	40	40	73	16
Unicorn Rafting	72	80	80	80	80	80	80
Northern Outdoors	80	80	80	80	80	80	80
Back Country River	16	0	0	0	0	0	0
Rapid Transit	16	32	24	0	0	0	0
Whitewater Adventures	16	32	16	0	0	0	0
Wildwater Adventures	40	40	48	48	0	0	0
Crabapple Whitewater	0	0	0	0	0	0	16
# of Outfitters by Size of Allocation							
Max (80)	2	3	3	3	4	4	5
Med (40-79)	6	3	4	5	3	3	2
Small (16-39)	6	6	4	2	3	2	3
Total # of Outfitters with Allocations	14	12	11	10	10	9	10

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SHARE OF MARKET
(Outfitters Currently in Business)

	Kennebec							Penobscot						
	1983	1984	1985	1986	1987	1988	1989	1983	1984	1985	1986	1987	1988	1989
All Outdoors Adventure	1.7%	3.5%	5.0%	2.9%	3.6%	3.6%	3.6%	0%	0%	0%	0%	0%	0%	0%
Atlantic Outdoor	0	0	0	.1	.4	.1	.1	0	0	0	0	0	0	0
Crabapple Whitewater	3.9	5.1	5.3	6.1	6.0	8.0	9.0	0	0	0	0	0	0	1.0
Downeast Rafting	12.9	14.7	12.4	11.4	9.8	8.4	10.1	6.4	7.4	8.7	9.8	5.8	7.9	7.9
Eastern River	10.4	7.2	9.5	8.7	7.6	9.9	8.9	28.5	27.2	22.0	17.6	20.0	19.6	21.5
Great Adventures	3.7	3.3	2.5	2.3	3.9	3.9	4.9	1.0	1.3	.4	.6	.8	.6	.4
Maine Whitewater	11.2	9.7	7.9	7.3	7.6	8.5	8.5	6.2	8.3	8.0	9.7	7.4	8.0	7.0
New England Whitewater	4.3	5.0	6.2	9.4	8.4	8.1	9.5	.7	1.7	2.7	5.7	8.1	9.8	9.1
North American Whitewater	0	0	0	.6	2.0	1.9	2.9	0	0	0	.2		.3	.3
North Country Rivers	.9	2.2	2.4	1.9	1.0	1.1	1.1	.81	1.0	2.9	4.3	4.2	4.8	6.8
Northern Outdoors	23.5	20.9	20.2	19.3	19.5	18.3	18.9	16.5	16.6	17.6	16.6	17.4	17.3	16.1
Rolling Thunder	2.5	3.8	.4	5.3	5.6	3.9	2.9	1.5	2.7	2.9	3.9	2.8	3.3	3.3
Unicorn Rafting	11.8	8.8	10.6	11.4	12.3	14.3	12.3	15.6	15.8	17.8	19.5	19.6	18.1	18.8
Voyagers Whitewater	1.9	2.3	2.2	1.8	2.5	2.1	2.1	.2	0	0	.5	.8	.2	.2
Wilderness Rafting	5.2	6.5	7.3	7.5	8.4	7.5	8.5	8.4	8.3	9.2	6.9	8.1	9.3	7.3
TOP 1	23.5	20.9	20.2	19.3	19.5	18.3	18.9	28.5	27.2	22.0	19.5	20.0	19.6	21.5
TOP 2	36.4	35.7	32.6	30.8	31.8	32.6	31.2	45.1	43.9	39.8	37.1	39.6	37.7	40.3
TOP 3	48.3	44.9	43.3	42.2	41.6	42.5	41.3	60.7	59.2	57.4	53.8	57.0	55.0	58.4
TOP 4	59.5	53.8	52.8	51.6	50.0	51.0	50.8	69.1	67.6	66.6	63.7	65.1	64.8	65.5

SOURCE: Industry data provided by the Department of Inland Fisheries & Wildlife.

RANKING OF COMPANIES BASED ON % OF ALLOCATION USED
(1 = Highest % used)

	Kennebec Saturday				Penobscot Saturday				Penobscot Sunday			
	1985	1986	1988	1989	1985	1986	1988	1989	1985	1986	1988	1989
Crabapple	2	2	9	4	NA	NA	NA	10	NA	NA	NA	8
Downeast	7	3	7	2	4	5	7	8	7	6	7	10
Eastern River	6	5	5	6	1	1	4	1	2	4	3	1
Great Adventures	12	9	13	13	NA	NA	NA	NA	NA	NA	9	NA
Maine Whitewater	8	3	3	7	5	7	8	7	8	2	6	9
New England Whitewater	7	4	6	3	NA	9	6	9	3	3	5	6
North American	NA	NA	4	5	NA	NA	NA	NA	NA	NA	NA	NA
Northern Outdoors	1	1	1	1	2	3	2	4	1	1	1	3
Rolling Thunder	9	8	12	11	9	6	3	6	9	9	NA	7
Unicorn	11	5	2	10	3	2	1	2	5	5	2	4
Voyagers	10	10	10	8	NA	NA	NA	NA	NA	NA	NA	NA
Wilderness	5	7	11	12	6	7	9	5	3	6	8	2
All Outdoors	3	11	8	9	NA	NA	NA	NA	NA	NA	NA	NA
North Country	NA	NA	NA	NA	7	4	5	3	6	8	4	5

SOURCE: Industry data provided by the Department of Inland Fisheries & Wildlife.

**KENNEBEC RIVER – 1989
SATURDAYS & HOLIDAYS**

<u>Company</u>	<u>Allocation</u>	<u>Total Allocation</u>	<u>Total Passengers/%</u>	<u>Passengers Not Exceeding Allocation (%)</u>	<u>Days Exceed Allocation</u>
All Outdoors	30	600	382 (63.6)	371 (61.8)	6
Crabapple	80	1,600	1,132 (70.8)	1,128 (70.5)	1
Downeast	80	1,600	1,202 (75.1)	1,187 (74.2)	7
Eastern River	78	1,560	1,049 (67.2)	1,024 (65.6)	8
Great Adventures	76	1,520	680 (44.7)	674 (44.3)	2
Maine Whitewater	78	1,560	1,037 (66.5)	1,028 (65.9)	3
New England	79	1,580	1,155 (73.1)	1,141 (72.2)	6
North American	20	400	282 (70.5)	277 (69.2)	3
Northern Outdoors	80	1,600	1,393 (87.1)	1,389 (86.8)	2
Rolling Thunder	20	400	250 (62.5)	245 (61.2)	3
Unicorn Rafting	80	1,600	1,014 (63.4)	1,013 (63.3)	1
Voyagers	20	400	259 (64.8)	256 (64.0)	2
Wilderness Rafting	<u>79</u>	<u>1,580</u>	<u>927 (58.7)</u>	<u>924 (58.5)</u>	<u>1</u>
TOTAL	800	16,000	10,762 (67.3)	10,657 (66.6)	45

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APPENDIX F

PENOBSCOT RIVER - 1989
SATURDAYS & HOLIDAYS

<u>Company</u>	<u>Allocation</u>	<u>Total Allocation</u>	<u>Total Passengers/%</u>	<u>Passengers Not Exceeding Allocation (%)</u>	<u>Days Exceed Allocation</u>
Crabapple	16	304	88 (28.9)	88 (28.9)	0
Downeast	64	1,216	652 (53.6)	649 (53.3)	1
Eastern River	80	1,520	1,274 (83.8)	1,255 (82.6)	7
Maine Whitewater	69	1,311	708 (54.0)	705 (53.7)	1
New England	62	1,178	630 (53.4)	626 (53.1)	3
North Country	32	608	486 (79.9)	474 (77.9)	8
Northern Outdoors	80	1,520	1,178 (77.5)	1,174 (77.2)	2
Rolling Thunder	16	304	166 (54.6)	163 (53.6)	2
Unicorn Rafting	80	1,520	1,254 (82.5)	1,247 (82.0)	3
Wilderness Rafting	<u>61</u>	<u>1,159</u>	<u>636 (54.8)</u>	<u>631 (54.4)</u>	<u>2</u>
TOTAL	560	10,640	7,072 (66.5)	7,012 (65.9)	29

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**PENOBSCOT RIVER - 1989
SUNDAYS & HOLIDAYS**

<u>Company</u>	<u>Allocation</u>	<u>Total Allocation</u>	<u>Total Passengers/%</u>	<u>Passengers Not Exceeding Allocation (%)</u>	<u>Days Exceed Allocation</u>
Crabapple	16	288	102 (35.4)	102 (35.4)	0
Downeast	80	1,440	437 (30.3)	437 (30.3)	0
Eastern River	80	1,440	1,033 (71.7)	1,027 (71.3)	3
Maine Whitewater	80	1,440	480 (33.3)	480 (33.3)	0
New England	72	1,296	566 (43.6)	564 (43.5)	1
North Country	40	720	386 (53.6)	386 (53.6)	0
Northern Outdoors	80	1,440	823 (57.1)	817 (56.7)	3
Rolling Thunder	16	288	114 (39.5)	112 (38.8)	1
Unicorn Rafting	80	1,440	786 (54.5)	786 (54.5)	0
Wilderness Rafting	<u>16</u>	<u>288</u>	<u>201 (69.7)</u>	<u>192 (66.6)</u>	<u>6</u>
TOTAL	560	10,080	4,928 (48.9)	4,903 (48.6)	14

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APPENDIX H

NUMBER OF DAYS OVER ALLOCATION

	1986				1988				1989			
	<u>Kennebec</u>	<u>Penobscot Saturday</u>	<u>Penobscot Sunday</u>	<u>Total</u>	<u>Kennebec</u>	<u>Penobscot Saturday</u>	<u>Penobscot Sunday</u>	<u>Total</u>	<u>Kennebec</u>	<u>Penobscot Saturday</u>	<u>Penobscot Sunday</u>	<u>Total</u>
All Outdoors	4	N/A	N/A	4	6	N/A	N/A	6	6	N/A	N/A	6
Crabapple	1	N/A	N/A	1	0	N/A	N/A	0	1	0	0	1
Downeast	6	0	1	7	1	3	0	4	7	1	0	8
Eastern River	20	4	4	28	4	5	2	11	8	7	3	18
Great Adventures	9	N/A	N/A	9	0	N/A	0	0	2	N/A	N/A	2
Maine Whitewater	8	3	2	13	0	1	0	1	3	1	0	4
New England	6	7	5	18	3	0	0	3	6	3	2	11
North American	N/A	N/A	N/A	N/A	5	N/A	N/A	5	3	N/A	N/A	3
North Country	11	6	9	26	N/A	4	4	8	N/A	7	0	7
Northern Outdoors	16	3	9	28	2	0	0	2	2	2	6	10
Rolling Thunder	12	4	5	21	3	3	N/A	6	3	2	2	7
Unicorn Rafting	8	14	11	33	5	3	4	12	1	3	0	4
Voyagers	3	N/A	N/A	3	2	N/A	N/A	2	2	N/A	N/A	2
Wilderness Rafting	8	5	5	18	0	1	0	1	1	2	9	12

SOURCE: Department of Inland Fisheries & Wildlife Industry Data

#380LHS

NUMBER OF HOURS OF "RAFTABLE FLOW"*

ON THE KENNEBEC BY DAY OF WEEK

Day	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>
Sunday	58	48	44	40	3	37
Monday	93	83	79	75	23	72
Tuesday	96	89	83	77	19	69
Wednesday	97	94	87	75	23	76
Thursday	91	83	79	76	18	80
Friday	93	86	88	73	18	81
Saturday	<u>79</u>	<u>84</u>	<u>74</u>	<u>59</u>	<u>12</u>	<u>57</u>
TOTAL	607	567	534	475	116	472

*Hours of "raftable flow" = number of hours between 11:00 a.m. and 5:00 p.m. from March 15-August 31 when flow at The Forks gaging station is between 4,000 cfs and 10,000 cfs, which is the equivalent of 447 to 674 feet. "Raftable flow" is a concept developed by the Department of Conservation in the preparation of their study "Commercial Whitewater Rafting - Review of Recreational Use Limit and Allocation System", 1986.

#380LHS



Great Northern Paper

a company of
Great Northern Nekoosa Corporation

October 26, 1989

Mr. John Knox
Office of Policy and Legal Analysis
State House Station 13
Augusta, Maine 04330

Ref: Flows in West Branch of Penobscot River

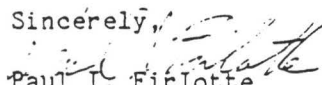
Dear Mr. Knox:

The average monthly water flow information you requested below McKay Station on the West Branch of the Penobscot River in cubic feet per second (cfs) is as follows:

<u>MONTH</u>	<u>YEARS</u>					
	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>
May -	3389	1922	1963	2361	1671	2070
June	5630	1926	2149	2563	1964	2404
July	3437	1941	2051	2106	1830	2269
August	3316	2163	1408	2221	2104	2364
September	2982	1613	1907	1662	2321	2202

If we can be of more assistance please call.

Sincerely,


Paul I. Firlotte
Power Systems Manager

APPENDIX K

Millinocket, Maine 04462. (207) 723-5131

INJURY RECORD

Injuries per 10,000 Passengers

	Kennebec	Penobscot
1983	5	24
1984	4	18
1985	6	17
1986	7	11
1987	8	11
1988	5	10
1989	14	12

SOURCE: Whitewater Safety Committee from Department of Inland Fisheries and Wildlife Industry Records

#380LHS

APPENDIX L

WHITEWATER RAFTING FUND

	<u>6/30/84</u>	<u>6/30/85</u>	<u>6/30/86</u>	<u>6/30/87</u>	<u>6/30/88</u>	<u>6/30/89</u>
<u>Fund</u>						
Balance	\$ 7,000	\$25,000	\$43,000	\$14,000	\$ 5,000	\$19,000
Revenues		62,000	69,000	64,000	64,000	89,000
Distributions		45,000	50,000	93,000	73,000	74,000
Number of Rafter's	29,000	40,000	45,000	48,000	52,000	52,000
Number with Allocations	16	16	15	13	12	13

Warden Service

Balance*						
Revenues	N/A**	N/A	N/A	N/A	\$48,000	\$48,000
Expenditures on Rafting	N/A	N/A	N/A	N/A	28,000	37,000

Parks & Recreation

Balance	\$ 7,000	\$15,000	\$24,000	\$30,000	\$37,000
Expenditures on Rafting		5,000	14,000	12,000	11,000

*IF&W does not carry a balance but uses a surplus on other activities of the Warden Service.

**The Committee did not receive reports for the years 1984-1987.

DEPARTMENT OF INLAND FISHERIES AND WILDLIFE
Whitewater Hours, Costs and Activities
(Does Not Include Guides Board)

FY90

Commissioner's Office and
Administration:

Personnel:	200 Hours	\$ 5,000
All Other:	Printing, Mailing	300
Subtotal		<u>\$ 5,300</u>

Warden Service:

Personnel:	1,150 Hours	\$17,290
All Other:	Mileage (16,000 miles @ .22¢)	3,520
	Lodging, Travel, Meals	1,850
	Printing, Mailing	300
Subtotal		<u>\$22,960</u>

Refund of Dead River Fees (1984-1989)	15,363
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FY90 Department Total	<u>\$43,623</u>
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FY90 Activities:

1. Compiling and providing information
2. Preparing for 1990 allocations
3. Enforcement (Increased by adding 2 Assistant Wardens in FY90)
4. Program Administration
5. Responding to legislation

11/17/89

November 29, 1989

DEPARTMENT OF CONSERVATION
BUREAU OF PARKS AND RECREATION
WHITE WATER RAFTING REPORT

Fiscal Year 1989

Remaining unexpended funds from previous years	29,950.55
Funds received from IF & W - FY89	<u>18,109.95</u>
TOTAL:	48,060.50
 Total expenditures for FY89	 11,431.42
 Amount available for FY90	 36,629.08

Expenditures in Fiscal Year 1990 through October

Lease GNP	3,000.00
Gas, oil, grease	239.35
Repairs - buildings, roads, grounds	279.56
Capital Equipment	465.00
Telephone	238.75
Electricity	56.62
Stamps, Printing and Binding	544.44
Fuel Oil	10.63
Clothing	70.68
Misc. Minor Equipment and Supplies	394.22
Office Supplies	69.97
StaCap	<u>134.58</u>
TOTAL:	5,503.80
 Anticipated Expenditures for the remaining FY90	 7,000.00
 Expenditures for FY90 will include insurances, general operating expenses and general site repair.	
 Anticipated Income from IF & W - FY90	 18,000.00
 Anticipated amount available for FY91	 42,125.28

Projected Expenditures FY91

General Operations	13,500.00
Replacement Vehicle	11,000.00
Two Radio's	2,000.00
Special Services Contract - Moxie Falls	<u>1,200.00</u>
TOTAL:	27,700.00

Submitted by the Whitewater Advisory Committee
Pursuant to MRSA §7369-A

LR #2661
Drafted by: JBK
Date: December 5, 1989
Doc. #347LHS/pg.1

SECOND REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

AN ACT to Amend the Laws Relating to Whitewater Rafting

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §7365 sub-§3 is amended to read:

3. Fee. The annual basic fee for a commercial whitewater license shall be set by the department and adjusted biennially by rule to reflect the actual cost of administering the license program. ~~The fee for 1983-84 shall be \$250.~~ The fee for reissuance of a license shall be equal to the annual basic fee for a license. These fees shall be credited directly to the department and used in accordance with section 7074.

Sec. 2. 12 MRSA §7367 sub-§2 is amended to read:

2. Whitewater Safety Committee. The Whitewater Safety Committee established by Title 5, section 12004-I, subsection 70 shall advise the commissioner in establishing and reviewing safety requirements for whitewater trips, developing a safety information program and reviewing the safety record of whitewater guides and outfitters. The committee shall submit a written report annually on each outfitter's safety record to

APPENDIX P

~~the Whitewater-Advisory-Committee, while the advisory committee remains in existence~~ Commissioner of the Department of Inland Fisheries and Wildlife.

Sec. 3. 12 MRSA §7368-A is enacted to read:

7368-A. Rapidly flowing rivers

1. User fee. Outfitters shall pay a user fee of \$1 per passenger, excluding guides, carried by any outfitter on any rapidly flowing river. This fee shall be paid by the 30th day of the month following the month in which the passengers were carried.

2. Reporting. Each outfitter shall report monthly to the department of the number of passengers carried each day on each rapidly flowing river. This report shall be submitted by the 30th day of the month following the month in which the passengers were carried. Inaccurate reporting or failure to report may subject the outfitter to the penalties in section 7370-A.

3. Passenger limitation.

The following limitations apply to the number of passengers an outfitter may carry:

A. No outfitter may carry more than 80 passengers per day on any rapidly flowing river.

B. Notwithstanding other provisions of this chapter, and subject to rules adopted as necessary by the department, an outfitter may carry up to 120 passengers on each of ten unallocated weekdays on any river. The established put-in order shall apply, and all passengers over 80 in number shall be placed at the end of the established put-in order.

Sec. 4. 12 MRSA §7369 sub-§2 is amended as follows:

2. Allocation required; affiliated outfitters restricted. Except as provided in subsection 10, operation of a commercial whitewater trip on the Kennebec River between Harris Station and West Forks or on the West Branch Penobscot River between McKay Station and Pockwockamus Falls without an allocation or in excess of an allocation is prohibited. No allocation is required for other rivers nor for other stretches of those rivers, ~~but no outfitter may carry more than 80 passengers per day on any rapidly flowing river within the State.~~ Not more than one member of an affiliated group may conduct whitewater trips on any river or stretch of river for which a specific allocation is required, even on days for which an allocation is not required.

Sec. 5. 12 MRSA §7369 sub-§7, ¶A, sub-¶7 is amended to read:

(7) When allocations are considered for subsequent years, the performance of the outfitter in providing the services proposed for the previous allocation and compliance with the terms of the allocations, including on-time submission of required reports and fees; and

Sec. 6. 12 MRSA §7369 sub-§7, ¶F is enacted to read:

F. Notwithstanding other provisions of this chapter, the department shall adopt by rule a procedure for awarding allocations beginning in 1991 which shall provide that any outfitter that uses its allocation in an amount equal to or greater than 75% of the industry average use shall retain the allocation for the subsequent allocation period, subject to remaining a licensed commercial whitewater outfitter. The rule shall further provide a means for allocating lost allocations among other outfitters.

Sec. 7. 12 MRSA §7369 sub-§8 is amended as follows:

8. Allocation fee; ~~user-fee.~~ Outfitters shall pay the department ~~the-following-fees:~~

~~A.~~Aan allocation fee, for either river ~~for which~~ when allocations are required, of \$250 per unit of 20 passengers or fraction thereof allocated per day on either river in excess of a single unit on a single river. This may be in quarterly payments, beginning 30 days after the allocation is awarded. The maximum allocation fee is \$1,750 for the privilege of carrying 80 passengers per day on both rivers; and

~~B.~~A user fee of \$1 per passenger, excluding guides, carried by any outfitter on any rapidly flowing river. This fee shall be paid by the 10th day following the month in which the passengers were carried.

Sec. 8. 12 MRSA §7369 sub-§9 is repealed.

Sec. 9. 12 MRSA §7369 sub-§10, ¶A, as enacted by PL 1983, c. 502, §4, as amended, is repealed and replaced as follows:

A. If the recreational use limit on other days has not been reached, allocations shall be required only for Saturdays for the period June 8 through August 31, and for July 4th. If the department determines that the recreational use limit will be reached other days, the department shall provide by rule for allocations.

Sec. 10. 12 MRSA §7370 sub-§ 3 is amended to read:

3. Budget. The expenditures from the Whitewater Rafting Fund shall be subject to legislative approval in the same manner as the General Fund budgets of the department and the bureau are approved. The department and the bureau shall report annually, before February 1st, to the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife on its planned expenditures for the next fiscal year ~~and the next previous year, its actual and planned expenditures for the current fiscal year and its final expenditures for the last fiscal year.~~

Sec. 11. 12 MRSA §7370 sub-§4, ~~TD~~ is enacted to read:

D. The senior elected officer and the senior financial official of each county and municipality that receives money from the Whitewater Rafting Fund shall submit a statement of assurance to the Commissioner of the Department of Inland Fisheries and Wildlife each year by March 1st certifying that the money received in the last fiscal year has been used in compliance with the provisions of this section. The Commissioner shall withhold payment from the fund in subsequent years until this statement is received.

Sec. 12. The committees having jurisdiction over business legislation and fisheries and wildlife shall jointly submit legislation to the 115th Legislature by December 10, 1990 which provides for the transfer of the authority to regulate the whitewater rafting industry from the Department of Inland Fisheries and Wildlife to the Department of Professional & Financial Regulation. Issues dealing with safety shall continue to be the responsibility of the Department of Inland Fisheries and Wildlife. If the Committee desires assistance of the legislative staff in drafting the legislation they shall request assistance from the Legislative Council.

STATEMENT OF FACT

This bill accomplishes the following:

Sec. 1. Eliminates a reference to 1983-84 license fees.

Sec. 2. Changes the recipient of the annual Whitewater Safety Committee report from the Whitewater Advisory Committee to the Commissioner of the Department of Inland Fisheries and Wildlife.

Sec. 3. Creates a separate section dealing with any rapidly flowing river. Adds a provision that allows an outfitter to carry up to 120 passengers on each of ten unallocated weekdays.

Sections 4, 6 & 8. Remove provisions dealing with all rapidly flowing rivers from the section dealing with allocated rivers.

Sec. 5. Requires that timely submission of reports and payment of fees be factors considered in granting allocations.

Sec. 6. Requires that outfitters be allowed to keep their entire allocation if they have a history of using 75% of their allocation.

Sec. 9. Limits allocated days to Saturdays from June 8th through August 31st and July 4th.

Sec. 10. States that the annual report on the Whitewater Rafting Fund is to contain data on the last, current and next fiscal years.

Sec. 11. Requires that counties and municipalities that receive money from the Whitewater Rafting Fund certify annually to the Commissioner of the Department of Inland Fisheries and Wildlife that these monies have been spent on river recreation activities, with emphasis on rafting, as required by law.

Sec. 12. Requires that the Committees on Business Legislation and Fisheries and Wildlife submit a bill calling for transfer of responsibility for regulating rafting from the Department of Inland Fisheries and Wildlife to the Department of Professional and Financial Regulation.

